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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/070,531 | 06/05/2002 | Edward S Yeung | 215630 | 5546 |

23460 7590 07/16/2003

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EXAMINER

ROSENBERGER, RICHARD A

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|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

2877

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/070,531 | YEUNG ET AL. |
| | Examiner Richard A Rosenberger | Art Unit 2877 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 06 March 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-44 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-44 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) Other: _____

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yeung et al (US 5,324,401) in view of Gilby et al (US 5,900,934).

Yeung et al shows a method and apparatus for optically analyzing multiple samples simultaneously by providing an array of multiple containers (capillaries) each of which contains a sample to be analyzed, irradiating the array with light appropriate for the test, and detecting light from the samples with a detection means positioned apart from the array of containers.

Yeung et al uses the system to measure fluorescence of the sample, and his system is arranged for this test. However, it is known in the art that samples in capillaries can also be usefully tested by absorption; Gilby et al teaches this measurement by absorption, see in particular column 1, lines 51 – 62, which discloses "passing light of a certain wavelength through the capillary tube and then detecting the amount of light which has passed through the tube using a photodetector" and that the "wavelength used is chosen to coincide with an absorption band of the sample components of interest".

It would have been obvious to adapt the system of Yeung et al to measure absorption by directing the light directly through the capillaries as taught by Gilby

et al and choosing the wavelength and intensity of light to coincide with an absorption band of the sample components of interest, also as taught by Gilby et al. As the detector array of Yeung et al can detect light that reached it from the capillaries, it can detect light from the capillaries that reaches regardless of the particular manner it leaves the capillaries on its way to the detector.

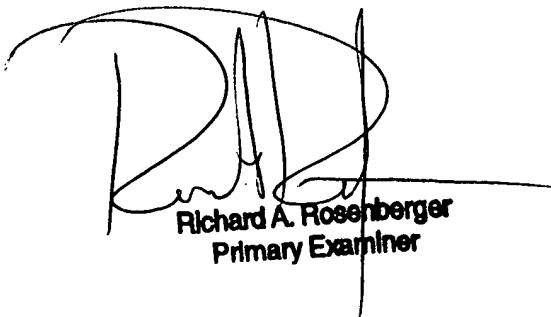
Yeung et al does not appear to explicitly teach the spacing of the detector from the capillaries, but as there can be on the order of 1000 capillaries in the capillary array (column 9, line 26), It would have been obvious to place the detector at least 10 times the diameter of one of the capillaries in order to avoid an expensive extremely-wide-angle lens. Yeung et al teaches that the lens can be a "standard distortion free camera lens" (column 9, lines 40-41), which at least suggests a lens which would not place the detector extremely close to the capillaries.

3. Papers related to this application may be submitted to Group 2800 by facsimile transmission. The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (15 November 1989). The fax number is (703) 308-7722.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. A. Rosenberger whose telephone number is (703) 308-4804. The examiner's normal work schedule is 8:00 to 4:30 eastern time, Monday through Friday.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.

R. A. Rosenberger
11 July 2003



Richard A. Rosenberger
Primary Examiner